IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 9875 of 1994

For Approval and Signature:

HON'BLE MR. JUSTICE ANANT S DAVE

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

BH SOLANKI

Versus

SECRETARY

Appearance:

1. Special Civil Application No. 9875 of 1994

NOTICE SERVED for Petitioner No. 1

Mrs. Manisha Lavkumar Shah, AGP for Respondent No. 1-4

CORAM : HON'BLE MR. JUSTICE ANANT S DAVE

Date of decision: 14/10/2004

ORAL JUDGEMENT

1. In the present writ petition under Article 226 of the Constitution of India, the grievance of the

petitioner is that the birth date of the petitioner is not the correct birth date what is recorded in the service, and an appropriate direction may be given to the respondents to rectify the said mistake by changing the birth date of the petitioner as "19th August 1936" in stead of "19th August 1938".

2. The petitioner, at the relevant point of time, was serving in the office of the respondent no.4 as Senior Clerk at village Devrajiya, in the year 1959. At pages 11 to 16 of the compilation, the petitioner produced several documents, namely, (i) School Leaving Certificate issued by Karansinhji High School, Rajkot, mentioning his birth date as 19.8.1936 in number as well as in words, (ii) Certificate given by the Principal of Pay Center School, Saladi,Taluka:Salatiya, (iii) Certificate issued by Sanatan Dharma Multi Purpose High School, Bhavnagar, and (iv) Certificate issued by Kamani Forward High School,Amreli, mentioning the birth date as 19.8.1938.

3. The petitioner has contended that, as per the Government Notifications issued by the General Administration Department, and the Finance Department, State of Gujarat, Gandhinagar, dated 11.8.1989 and 8.6.1982, respectively, make a provision with regard to correction of birth date of the government employee in the service book. It is further contended by the petitioner that the date of birth may, however, be permitted to be altered at the later stage if the Government is satisfied that a bona fide clerical mistake has been committed and that it should be rectified.

4. After considerable time of service tenure of the petitioner, for the first time, the grievance with regard to his birth date was raised by the petitioner in the month of January 1991 and, till then, no grievance was raised. The petitioner was even called upon to sign the pension papers by letter dated 27th July 1994 and the petitioner addressed a letter with regard to correction of his birth date on the very next day, i.e. 28.7.1994. In short, the petitioner has relied upon the certificates given by the school authorities from time to time and the Government Resolutions of the General Administration Department and the Finance Department, as stated hereinabove.

5. Learned Assistant Government Pleader, Mrs. Shah, has contended that the issue as to correction or rectification of birth date was agitated by the petitioner at the fag end of his service, precisely,

three years before the date of his retirement, and it is a disputed question of fact and cannot be gone into by this Court while exercising extraordinary power under Article 226 of the Constitution of India. She has further submitted that the certificate annexed by the petitioner at Annexure "C", page 11 of the compilation, does indicate the birth date of the petitioner in number as well as in words within brackets. However, while mentioning the birth date in number, there was a overlapping, whereas, in words, it is clearly mentioned as "nineteenth August nineteen thirty six". She has further stated that, at the relevant point of time, for admission into the primary section of the school in Std. I, the minimum requirement of age of a student was 7 years and, accordingly, the petitioner was admitted in Std.I in the year 1944 and, therefore, it correlates with the date of birth of the petitioner as 16.8.1936. She has further contended that there was no clerical error or typographical mistake in recording the date of birth of the petitioner in the service book. In support of her contentions, she has relied upon the judgment of the Supreme Court in the case of Union of India vs. Harnam Singh, reported in AIR 1993 Supreme Court 1367, and the judgment of this Court in the case of Hansabehn S. Zaveri vs. State of Gujarat and others, reported in 1993 (2) G.L.H. 1076.

6. Admittedly, the grievance about the birth date was raised after lapse of 31 years of service and it was only three years prior to the date of his retirement that the petitioner wanted correction of that entry. All these 31 years of service, the petitioner had accepted the entry in his service record about his date of birth as correct. Further, no representation as per the requirement under the Bombay Civil Services Rules, 1959, was preferred by the petitioner within five years from the date of entry into service and the case of the petitioner does not fall under the exception of bona fide clerical mistake, which can be rectified by the respondents. This Court would not like to exercise the extraordinary jurisdiction under Article 226 of the Constitution by entering into the disputed question of fact of correction of date of birth more particularly when the petitioner was not protected at the stage of issuance of Rule by this Court. The petitioner had already retired from service and, after lapse of ten years therefrom, nothing remains to be decided further. Therefore, the petition has no merit and is required to be rejected. The petition is rejected. Rule is discharged with no order as to costs.

(Anant S. Dave, J.)
(swamy)